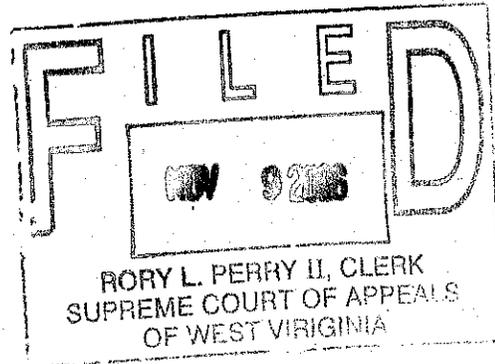


TO: RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS

FROM: BOBBY GIBSON #08262
Mt. Olive Correctional Complex

DATE: NOVEMBER 8, 2006



Mr. Perry,

Back on October 5, 2006 petitioner filed with this Honorable Court his petition for a writ of mandamus and to show cause why this Honorable Court should not issue that writ. On October 23, 2006 this Honorable Court docket this case and styled it as SER Bobby Gibson v. Wetzel County Circuit Court, ~~Supreme Court No. 062741.~~

At this time petitioner has enclosed four (4) copys of an argument of the case that he would ask this Honorable Court to attach to his writ of mandamus.

If this court has any questions regarding this matter feel free to contact me at the address below.

Bobby Gibson

Bobby Gibson #08262

Mt. Olive Correctional Complex

One Mountainside Way

Mt. Olive, WVa 25185

1. Petitioner was doing a life sentence for a 1971 aggravated robbery conviction. Petitioner made parole on this sentence sometime around Oct. 1989, while on parole petitioner was arrested and charged with new charges out of Wetzel County sometime around Dec. 25, 1990.

Petitioner was returned back to the penitentiary and his parole was revoke sometime around Feb. 1991. Petitioner had No revocation hearing. After returning back to the penitentiary, petitioner received from the records department dated May 1, 1991, his new parole date of Jan. 1992, as his new eligibility date for his next parole hearing, of one year after returning back to the penitentiary under West Virginia Statute Code 62-12-13, The Parole Statute. Petitioner never had any parole revocation hearing revoking his parole.

The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States requires a probationer or parolee who is arrested for violating the conditions of his or her probation or parole to be afforded both a prompt preliminary hearing and a final revocation hearing. " A parole revocation hearing being a critical proceeding at which the accused parolee's liberty is in jeopardy, must be conducted within the protections afforded by the state and federal constitutions. " The West Virginia Parole Board fails to conduct said hearing within the time limits contained in 7A W.Va. C.S.R. §§ 92-1-11.1 (b) and 92-1-11.2 (b) (1983):

While petitioner was back at the penitentiary serving his sentence for his 1971 robbery conviction after he was arrested and before his parole was revoke, the Jan. 1991 term of the grand-jury for Wetzel County indicted the petitioner. Petitioner went to trial on or about Sept. 29 1991 and was found guilty and sentence on or about Dec. 6, 1991. The trial court ran all sentences that petitioner was convicted of consecutively to each other and not consecutively to his life sentence.

Even though the trial court gave petitioner time served from the date of arrest of Dec. 25, 1990, does not cure that petitioner was already serving time on his life sentence when he was returned to the penitentiary on or about Feb. 1991, and the records department gave petitioner a new parole eligibility date as of Jan. 1992.

After petitioner was returned to the penitentiary after the sentencing hearing on Dec. 6, 1991, the record department on Jan. 15 1992, gave petitioner a new parole eligibility date as of Dec. 2005 as his next parole date. This meant that after petitioner served his one year minimum to be eligible for parole on his 1971 life sentence for his robbery conviction petitioner would start serving his minimum sentence's from the Wetzel County conviction, where the court ran all of

his sentences consecutively to each other.

Therefore, petitioner after serving these sentences should have been discharged to his federal detainer. After petitioner has discharged all of his previous sentences cannot jump back and start serving his life sentence on the first sentence, because he had already served the minimum eligibility for parole of one year on that sentence, when he started serving his new sentences imposed by the circuit court of wetzel county on Dec. 6, 1991.

Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation. " A writ of habeas corpus ad-subjiciendum will lie to effect the release of one imprisoned in the State Penitentiary without authority of law. The West Virginia Parole Board must obey legislation and must act in a way which is not unreasonable, capricious, or arbitrary. " Habeas Corpus is a suit wherein probable cause therefor being shown a writ is issued which challenges the right of one to hold another in custody or restraint. " A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.

" A judgment which is wholly void, or is void in part, is subject to collateral attack and the enforcement of such judgment will be prevented in a habeas corpus proceeding. Point 5, syllabus, State ex rel. Beckett v. Boles, 149 WVa. 112. A person imprisoned under a void sentence will be released from such imprisonment by a writ of habeas corpus. Point 8, syllabus, State ex rel. Boner v. Boles, 148 W.Va. 802.

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